

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION**

HAROLD JOE BLACK

CIVIL ACTION NO. 05-2187-P

VERUS

JUDGE S. MAURICE HICKS, JR.

WARDEN, ET AL.

MAGISTRATE JUDGE HORNSBY

**MEMORANDUM ORDER**

Before the Court is Petitioner Harold Joe Black's ("Petitioner") appeal from Magistrate Judge Hornsby's order (Record Document 53) of December 28, 2006. In that order, Magistrate Judge Hornsby denied Petitioner's Motion for Expenses and Sanctions (Record Document 47) and Motion for Entry of Default (Record Document 48) because the Respondent, the State of Louisiana, answered the Petitioner's application within the time extensions granted by the Court. Respondent's answer, filed on December 7, 2006, is properly in the record. See Record Document 46.

Magistrate Judge Hornsby's December 28, 2006 order was a non-dispositive matter. The action taken in such order is not listed in 28 U.S.C. § 636(b)(1)(A) as one of the dispositive motions (often referred to as the "excepted motions") that a magistrate judge may not conclusively decide. Magistrate Judge Hornsby's order was not a recommendation to the district court; rather, it was an order from the magistrate judge on a non-dispositive matter than requires the district court to uphold the ruling unless it is clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A); see also Castillo v. Frank, 70 F.3d 382, 385 (5th Cir. 1995) & Perales v. Casillas, 950 F.2d 1066, 1070 (5th Cir.1992). This Court will review Magistrate Judge Hornsby's legal conclusions *de novo*, and will review his factual findings for clear error. See Choate v. State Farm Lloyds, No.

03-CV-2111, 2005 WL 1109432, \*1 (N.D.Tex. May 5, 2005).

This Court has reviewed the record, including petitioner's appeal (Record Document 53), in the instant matter and concludes that Magistrate Judge Hornsby's order of December 28, 2006 was neither clearly erroneous nor contrary to law. The record clearly evinces that the Respondent filed an answer within the time extensions granted by the court. See Record Document 46. Petitioner's contention that all claims were not answered by the State of Louisiana is simply not supported by the record. See Record Document 53 at 1.

Accordingly,

**IT IS ORDERED** that Petitioner Harold Joe Black's appeal from the Magistrate Judge's order of December 28, 2006 (Record Document 53) be and is hereby **DISMISSED**.

**IT IS FURTHER ORDERED** that the Magistrate Judge's order of December 28, 2006 (Record Document 53) be and is hereby **AFFIRMED** in all respects.

**THUS DONE AND SIGNED** at Shreveport, Louisiana, this the 5<sup>th</sup> day of March, 2007.

  
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S. MAURICE HICKS, JR.  
UNITED STATES DISTRICT JUDGE